



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Division of Mine Safety

4 (Amendment)

5 805 KAR 8:040. Criteria for the imposition and enforcement of sanctions against owners and part-
6 owners of licensed premises.

7 RELATES TO: KRS 351.1041, 351.120, 351.194, 352.010-352.540 [352.550]

8 STATUTORY AUTHORITY: KRS 351.025(1)(b), 351.070(13)

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the
10 Commissioner of the Department for Natural Resources [~~Department of Mines and Minerals~~] to
11 promulgate administrative regulations he deems necessary and suitable for the proper
12 administration of KRS 351.090 to 351.9901. KRS 351.025(1)(b) requires the Department for
13 Natural Resources [~~Department of Mines and Minerals~~] to promulgate administrative regulations
14 that establish comprehensive criteria for the imposition and enforcement of sanctions against
15 owners and part-owners of licensed premises whose intentional violation of, or order to violate,
16 mine safety laws places miners in imminent danger of serious injury or death. This administrative
17 regulation establishes the criteria for the imposition of civil monetary penalties and other
18 consequences upon an adjudication by the Mine Safety Review Commission that an owner or part-
19 owner of a licensed premises has committed this type of violation.

20 Section 1. (1) If an owner or part-owner of a licensed premises commits a first offense, as
21 adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a

1 civil monetary penalty against the owner or part-owner of not less than \$2,500 and not more than
2 \$10,000.

3 (2) If an owner or part-owner of a licensed premises applies for a foreman's certificate, an
4 inspector's certificate, or any other certificate under KRS Chapter 351 and Chapter 352
5 [~~Kentucky's mining laws~~], subsequent to a first offense adjudication by the Mine Safety Review
6 Commission that he intentionally violated, or ordered another person to violate, a mine safety law
7 which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety
8 [~~Kentucky Mining Board~~] shall consider that adverse adjudication during its consideration of the
9 individual's application. The Division of Mine Safety [~~Mining Board~~] may grant or deny the
10 application.

11 (3) If an owner or part-owner of a licensed premises applies for a license to operate a coal
12 mine in the Commonwealth of Kentucky subsequent to a first offense adjudication by the Mine
13 Safety Review Commission that he intentionally violated, or ordered another person to violate, a
14 mine safety law which placed a miner in imminent danger of serious injury or death, the Division
15 of Mine Safety [~~Kentucky Department of Mines and Minerals~~] shall consider that adverse
16 adjudication during its consideration of the application. The Division of Mine Safety [~~department~~]
17 may grant or deny the application.

18 (4) If an owner or part-owner of a licensed premises commits a second offense, as
19 adjudicated by the Kentucky Mine Safety Review Commission, the commission may impose a
20 civil monetary penalty against the owner or part-owner of not less than \$5,000 and not more than
21 \$10,000.

22 (5) If an owner or part-owner of a licensed premises applies for a foreman's certificate, an
23 inspector's certificate, or any other certificate under KRS Chapter 351 and Chapter 352

1 ~~[Kentucky's mining laws]~~, subsequent to a second offense adjudication by the Mine Safety Review
2 Commission that he intentionally violated, or ordered another person to violate, a mine safety law
3 which placed a miner in imminent danger of serious injury or death, the Division of Mine Safety
4 ~~[Kentucky Mining Board]~~ shall consider that adverse adjudication during its consideration of the
5 individual's application. After that second offense adjudication, there shall be a rebuttable
6 presumption that the applicant is not suitable to be certified in the Commonwealth of Kentucky,
7 and the applicant shall appear at a hearing before the Mine Safety Review Commission ~~[Mining~~
8 ~~Board]~~ and present evidence as to his suitability. The applicant shall bear the burden of proof in
9 the proceeding, in accordance with KRS 13B.090(7). The Division of Mine Safety ~~[Mining Board]~~
10 may grant or deny the application.

11 (6) If an owner or part-owner of a licensed premises applies for a license to operate a coal
12 mine in the Commonwealth of Kentucky subsequent to a second offense adjudication by the Mine
13 Safety Review Commission that he intentionally violated, or ordered another person to violate, a
14 mine safety law which placed a miner in imminent danger of serious injury or death, the Division
15 of Mine Safety ~~[Kentucky Department of Mines and Minerals]~~ shall consider that adverse
16 adjudication during its consideration of the application. After that second offense adjudication,
17 there shall be a rebuttable presumption that the applicant is not suitable to hold a mine license in
18 the Commonwealth of Kentucky, and the applicant shall appear at a hearing before the Mine Safety
19 Review Commission ~~[department]~~ and present evidence as to his suitability. The applicant shall
20 bear the burden of proof in the proceeding, in accordance with KRS 13B.090(7). The division
21 ~~[department]~~ may grant or deny the application.

1 (7) If an owner or part-owner of a licensed premises commits a third offense, as adjudicated
2 by the Kentucky Mine Safety Review Commission, the commission may impose a civil monetary
3 penalty against the owner or part-owner of not less than \$7,500 and not more than \$10,000.

4 (8) Upon the adjudication by the Mine Safety Review Commission of a third offense
5 committed by an owner or part-owner of a licensed premises, whether those offenses were
6 committed at the same mine or at more than one (1) mine, the owner or part-owner shall not be
7 eligible to obtain or hold any mine certificate or mine license within the Commonwealth of
8 Kentucky.

9 (9) Penalties against owners or part-owners of licensed premises, imposed pursuant to
10 subsection (1), (4), or (7) of this section, may only be imposed for the individual acts of the owner
11 or part-owner, not for the acts of another.

12 (10) If an owner or part-owner of a licensed premises is also a certified miner at the time
13 of committing his first or second offense, the Mine Safety Review Commission may additionally
14 impose on that owner or part-owner any nonmonetary penalties applicable to certified miners
15 pursuant to 805 KAR 8:030.

805 KAR 8:040 approved for filing.
Pages (1-4)

8/14/2017

Date

Charles G. Snavely
Charles G. Snavely, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2017 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by September 19, 2017, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email: michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation No.: 805 KAR 8:040
Contact Person: Michael Mullins

Contact number: (502) 782-6720
Email: michael.mullins@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that an owner or part-owner of a licensed premises has committed this type of violation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that an owner or part-owner of a licensed premises has committed violations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 351.025(1)(b) requires the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This administrative regulation establishes the criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that an owner or part-owner of a licensed premises has committed violations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that an owner or part-owner of a licensed premises has committed violations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment makes changes necessary to implement the requirements of SB 249 from the 2017 Legislative Session.

(b) The necessity of the amendment to this administrative regulation: KRS 351.025(1)(b) requires the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death. This

amendment was necessary to implement the changes related to SB 249 from the 2017 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by establishing the criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission that an owner or part-owner of a licensed premises has committed violations.

(d) How the amendment will assist in the effective administration of the statutes: KRS 351.025 requires the Department for Natural Resources to promulgate administrative regulations that establish comprehensive criteria for the imposition and enforcement of sanctions against individuals that are owners or part-owners of licensed premises, and that the Mine Safety Review Commission may impose civil monetary penalties. These amendments are necessary to implement the requirements of SB 249 from the 2017 Legislative Session.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to any entity that operates coal mine within Kentucky or is a certified miner or wishes to become a certified miner.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will follow established criteria for the imposition of civil monetary penalties and other consequences upon an adjudication by the Mine Safety Review Commission. The amendment will not significantly alter any processes except that the Division of Mine Safety replaces the Mining Board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not a cost increase associated with the proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no change in benefits. Owners or part-owners of a licensed premises will apply to the Division of Mine Safety for a foreman's certificate, an inspector's certificate, or any other certificate and the division will consider the merits of the application and the violations rather than the Mining Board.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendments to this administrative regulation will not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) No. All applications submitted by individuals under the authority of this administrative regulations will be considered under the same requirements by the Division of Mine Safety.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation No.: 805 KAR 8:040
Contact Person: Michael Mullins, Reg. Coordinator

Contact number: (502) 782-6720
Email: Michael.mullins@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Natural Resources, Division of Mine Safety.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.1041; 351.120; 351.194; 352.010- 352.540; KRS 351.025(1)(b); 351.070(13)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amended administrative regulation will not generate any new revenue for the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amended administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):	There is no known effect on current revenues.
Expenditures (+/-):	There is no known effect on current expenditures.
Other Explanation:	There is no further explanation.